

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TIMOTHY L. COLEMAN,

Petitioner,

-vs-

MARGARET BRADSHAW, Warden,

Respondent.

:

Case No. 3:03-cv-299

:

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

:

DECISION AND ORDER

This capital habeas corpus case is before the Court on Petitioner's Motion to Compel National CODIS Run of DNA Profile (Doc. No. 182). Petitioner notes that on January 3, 2008, this Court ordered the Ohio Bureau of Criminal Identification ("BCI") to run DNA samples relevant to this case in the national data base (Doc. No. 144). However, when BCI filed its Notice of Compliance, it reported it was unable to conduct a national search because that capacity is controlled by the Federal Bureau of Investigation. Petitioner seeks an order compelling BCI to run a national search.

BCI has responded that the Motion seeks an unavailable remedy because "BCI does not have the ability or legal authority to conduct manual keyboard searches of NDIS." (Memo in Opp., Doc. No. 186, PageID 2206.) It further claims the request is moot because it has asked the FBI to run the search and the FBI has denied the request. *Id.* Attached as Exhibit B to the BCI Memo is an email from the FBI Laboratory explaining that the request could not be performed "because your request

does not meet the criteria established for performing NDIS searches. Specifically, the profile does not meet the minimum number of loci for searching.”

Petitioner responds (Doc. No. 188) that BCI could have made the submission to the FBI sufficient by a process called “deduction.” Furthermore, Petitioner says, the FBI has given no adequate explanation of why it requires a minimum of seven loci. Petitioner asserts “[t]he FBI, for purposes of their own investigation, would surely run a keyboard search on less than seven (7) loci. In fact, undersigned has heard from a DNA expert that the FBI has run profiles with less than seven (7) loci.” *Id.* PageID 2217.

The Motion to Compel is denied. Petitioner offers no scientific authority for the “deduction” process and it is certainly not something of which judicial notice can be taken. Petitioner offers no evidence for the proposition that the FBI would do a search on as few loci as were submitted and the unattributed hearsay testimony of an “expert” is not acceptable evidence for determining that the FBI is somehow inappropriately responding to this case.

May 19, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge